

days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(d) *Maintenance and replacement.* An owner of rental housing assisted with HOME funds must maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(e) *Tenant selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that—

(1) Are consistent with the purpose of providing housing for very low-income and low-income families;

(2) Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;

(3) Give reasonable consideration to the housing needs of families that would have a preference under section 6(c)(4)(A) of the U.S. Housing Act of 1937 (Federal selection preferences for admission to public housing); and

(4) Provide for—

(i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

Subpart E—Program Administration

§ 954.500 Repayment of investment.

(a) HOME funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement ensures that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires. The amount of HOME funds expended on housing assisted with HOME funds that does not meet the affordability requirements for the period specified in § 954.306 or § 954.307, as applicable, must be repaid in accordance with paragraph (b) of this section.

(b) Any repayment of HOME funds (including repayment required if the housing no longer qualifies as affordable housing), and any payment of interest or other return on the investment of HOME funds, that is made be-

fore grant close out must be deposited in the grantee's account and used in accordance with the requirements of this part. A grantee may retain repayments, interest, and other return on investment of HOME funds that are made after grant closeout if the grantee agrees to use the funds for eligible activities.

(c) HUD will recapture HOME funds that are not expended within five years after the last day of the month in which it obligated the funds.

(d) *Termination before completion.* If a project is terminated before its completion, whether voluntarily by the grantee or otherwise, an amount equal to the HOME funds disbursed for the project must be paid by the grantee to its HOME account. If the HOME funds were disbursed by HUD, the amount must be paid to HUD; if the HOME funds were disbursed from the grantee's account, the amount must be paid to the grantee's account. If the amount is not repaid, the grantee will be subject to actions under § 954.600 *Performance reviews*, § 954.601 *Corrective and remedial actions*, and § 954.602 *Notice and opportunity for hearing; sanctions*.

§ 954.501 Grantee responsibilities; written agreements; monitoring.

(a) *Responsibilities.* The grantee is responsible for ensuring that HOME funds are used in accordance with all program requirements. The use of subgrantees and contractors does not relieve the grantee of this responsibility.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity (e.g., for-profit housing developer, nonprofit organization, homeowner, or IHA) the grantee must enter into a written agreement with the entity ensuring compliance with the requirements of this part. A subgrantee and a contractor must also enter into a written agreement before it disburses funds to any entity. The agreement remains in effect during the period for affordability under § 954.306 or § 954.307, as applicable, or if the entity is a subgrantee, during any period that the entity has control over HOME funds.

(c) *Provisions in written agreement.* At a minimum, the written agreement must include applicable provisions concerning the following items:

(1) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the grantee effectively to monitor performance under the agreement.

(2) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 954.306 or § 954.307, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(3) *Repayments.* If the entity is a subgrantee, the agreement must state if repayment, interest, and other return on the investment of HOME funds are to be remitted to the grantee or are to be retained for additional eligible activities by the entity.

(4) *Uniform administrative requirements.* If the entity is a subgrantee, the agreement must require the entity to comply with applicable uniform administrative requirements, as described in § 954.502.

(5) *Project requirements.* The agreement must require compliance with project requirements in § 954.400 through § 954.402 of this part, as applicable in accordance with the type of project assisted.

(6) *Housing quality standard.* The agreement must require owners of rental housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement.

(7) *Other program requirements.* The agreement must require the entity to carry out each activity in compliance with all Federal laws and regulations described in § 954.4.

(8) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 954.301 for the use of HOME funds by religious organizations.

(9) *Requests for disbursements of funds.* The agreement must specify that the entity may not request disbursement of funds under the agreement until the funds are needed for payment of eligi-

ble costs. The amount of each request must be limited to the amount needed.

(10) *Reversion of assets.* If the entity is a subgrantee, the agreement must specify that upon expiration of the agreement, the entity must transfer to the grantee any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(11) *Records and reports.* The agreement must specify the particular records that must be maintained and any information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(12) *Enforcement of the agreement.* The agreement must provide for a means of enforcement by the grantee or the intended beneficiaries. In addition, the agreement must specify remedies for breach of the provisions of the agreement. If the entity is a subgrantee, the agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the entity materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44.

(13) *Duration of the agreement.* The agreement must specify that the agreement is in effect for the period of affordability required by the grantee under § 954.306 or § 954.307.

(d) *Monitoring.* The grantee is responsible for managing the day-to-day operations of its HOME program, for monitoring the performance of all entities receiving HOME funds from the grantee to assure compliance with the requirements of this part, and for taking appropriate action when performance problems arise.

(1) Not less than annually, the grantee must review the activities of owners of rental housing assisted with HOME funds to assess compliance with the requirement of this part, as set forth in the written agreement under paragraphs (b) and (c) of this section. For multifamily housing, each review must include on-site inspection to determine compliance with housing codes and the requirements of this part. For rental housing containing one- to four-dwelling units, an on-site review must be

made once within each two-year period. The results of each review must be included in the grantee's performance report.

(2) Not less than annually, the grantee must review the performance of each contractor and subgrantee.

§ 954.502 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the grantee and any governmental subgrantee receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.21, 85.22, 85.26, 85.32, 85.33, 85.35, 85.36, 85.43, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A-122 (available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503; Telephone, (202) 395-7332)) and the following requirements of 24 CFR part 84 apply to subgrantees receiving HOME funds that are private nonprofit organizations: §§ 84.12, 84.22, 84.23, 84.25, 84.51, 84.52, and 84.71.

(c) *Alternatives to bonding.* For construction contracts that exceed the amount for small purchase under 24 CFR 85.36, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to HUD in accordance with 24 CFR 85.36(h). Performance and payment bonds for 100 percent of the total contract price are acceptable to HUD. There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the grantee. Alternative methods to provide performance and payment assurance may include:

(1) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(2) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

§ 954.503 Audit.

Audits of the grantee and subgrantees must be conducted in accordance with 24 CFR parts 44 and 45, as applicable.

§ 954.504 Closeout.

(a) A grant will be closed out when all the following criteria have been met:

(1) All funds to be closed out have been drawn down and expended for completed project costs, or funds not drawn down and expended have been deobligated by HUD;

(2) Project Completion Reports for all projects using funds to be closed out have been submitted. HUD will use data contained in the project completion reports in the preparation of the Closeout Reports;

(3) The grantee has been reviewed and audited and HUD has determined that all requirements, including affordability (for which also see paragraph (b)(2) of this section), are met or all monitoring and audit findings have been resolved.

(i) A signed copy of the grantee's most recent audit report—covering all funds to be closed out—must be received by HUD. If the audit review by the Department of Interior (DOI) results in significant delays, the Area ONAP may request a signed copy of the audit prior to DOI review and use it as the document needed prior to closeout. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the grantee agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the grantee's next single audit and that the grantee may be required to repay to HUD any disallowed costs based on the results of the audit.

(ii) The on-site monitoring of the grantee by the Area ONAP must include verification of data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between HUD data and grantee records.

(b) The Closeout Report contains the final data on the funds and must be signed by the grantee and HUD. In addition, the report must contain: